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U.S. Citizenship and Immigration Services

H2

[redacted]

FILE: [redacted] Office: NEWARK, NEW JERSEY Date: MAR 24 2004

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i).

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Newark, New Jersey. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of the Philippines. She was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission into the United States by fraud and willful misrepresentation of a material fact on July 4, 1996. She is the beneficiary of an approved Petition for Alien Worker (Form I-140). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to remain in the United States and reside with her lawful permanent resident sister.

The District Director concluded that the applicant had failed to show that a qualifying relationship exists in order to be eligible to apply for a waiver. The application was denied accordingly. *See District Director Decision* dated June 16, 2003.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

> (1) The Attorney General (now the Secretary of Homeland Security, [Secretary]) may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

To recapitulate, the record clearly reflects that on July 4, 1996 the applicant used a photo-substituted passport in order to gain admission into the United States by fraud and willful misrepresentation of a material fact. After entry, she remained longer than authorized and subsequently a Form I-140 was filed and approved on her behalf.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

As stated above, section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C)(i) of the Act, is dependent first upon a showing that the bar imposes an extreme hardship to the qualifying family member, citizen or lawfully resident spouse or parent of such alien. Congress specifically did not mention extreme hardship to a U.S. citizen or lawfully resident sister.

On appeal, counsel asserts that the applicant is eligible for the provision of the LIFE Act and that she should be compared to individuals who entered without inspection, those who were in transit and did not leave the United States, as well as those who jumped ship, and should be allowed to adjust her status under section 245(i) of the Act.

There is nothing in the LIFE Act or the related regulations that waives the ground of inadmissibility under section 212(a)(6)(C) of the Act. If an applicant for adjustment of status is found inadmissible under 212(a)(6)(C) of the Act, then he or she must obtain the 212(i) waiver and meet the standards therein. *See* 8 C.F.R. § 245.10(b)(3).

A review of the documentation in the record reflects that the applicant is single and that her parents are deceased. The applicant has failed to show that she has a qualified family member in order to be eligible to file for a waiver under section 212(i) of the Act. The applicant was offered an opportunity to submit evidence in opposition to the district director's findings. No additional evidence has been entered into the record.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.